

REMARKS

Claim Rejections – 35 U.S.C. §103

Claims 1, 2, 4, 6, 10-16, 21, 31 and 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,699,248 to Jackson (hereafter “Jackson”) in view of U.S. Patent No. 4,274,401 to Miskew (hereafter “Miskew”); claims 3 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jackson in view of Miskew in further view of U.S. Patent No. 6,238,396 to Lombardo (hereafter “Lombardo”); and claims 7, 8, 18 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jackson in view of Miskew and in further view of U.S. Patent No. 5,980,523 to Jackson (hereafter “the ‘523 patent”).

The Applicant’s previous response filed on October 27, 2008 presented comments and arguments in support of the patentability of pending claims 1-5, 7-8, 10-18, 21 and 31-38 over the cited references. However, the Applicant has since discovered that U.S. Patent No. 6,699,248 to Jackson can be removed as prior art via a Declaration of Prior Invention under 37 C.F.R. §1.131. Accordingly, the Applicant has submitted such a Declaration herewith to remove U.S. Patent No. 6,699,248 to Jackson as prior art to the subject application. The Applicant notes that the ‘248 patent to Jackson constitutes the primary patent reference for each of the outstanding claim rejections.

Declaration of Prior Invention in the United States Under 37 C.F.R. §1.131

The Applicant submits herewith a Declaration of Prior Invention under 37 C.F.R. §1.131 to remove U.S. Patent No. 6,699,248 to Jackson as prior art to the subject application. The Declaration has been signed by each of the inventors and indicates that on a date prior to May 9, 2002 (the filing date of Jackson), the Invention was conceived of and reduced to practice in the United States. To evidence conception and reduction to practice of the Invention, attached to the Declaration is an Invention Disclosure including drawings and a description of the Invention which correspond to the subject matter disclosed and claimed in the subject patent application. The dates listed on the Invention Disclosure have been blacked out, as well as dimensional data associated with the Invention. However, the joint inventors have declared that the “Date Conceived” and the “Date Constructed” occurred prior to May 9, 2002. The Declaration also indicates that on a date prior to May 9, 2002 and shortly after the Invention was reduced to

practice, the Invention was tested in the United States. The joint inventors have further declared that the "Date First Tested" listed on the Invention Disclosure occurred prior to May 9, 2002. Following construction and testing of the Invention, the Invention Disclosure was forwarded to the law firm of Woodard, Emhardt, Naughton, Moriarity & McNett for preparation of a patent application. A provisional patent application (U.S. Provisional Patent Application No. 60/421,701) disclosing and claiming the Invention was filed with the U.S. Patent and Trademark Office on October 28, 2002. The subject patent application was filed on October 28, 2003 and claims priority to the provisional patent application filed on October 28, 2002.

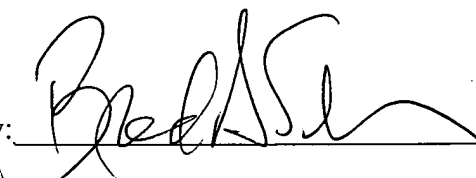
The Applicant submits that the attached Declaration is effective to remove U.S. Patent No. 6,699,248 to Jackson as prior art to the subject application, and withdrawal of the outstanding rejections based on the '248 patent to Jackson is respectfully requested. However, as indicated in the Applicant's previous response filed on October 27, 2008, further reasons support the patentability of pending claims 1-5, 7-8, 10-18, 21 and 31-38.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance with pending claims 1-5, 7-8, 10-18, 21 and 31-38.

Reconsideration of the present application is respectfully requested. Timely action towards a Notice of Allowance is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,

By: 

Brad A. Schepers,
Reg. No. 45,431
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204-2079
(317) 238-6334